

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINA J. M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C22-891-BAT

**ORDER REVERSING THE
COMMISSIONER’S DECISION**

Plaintiff appeals the ALJ's denial of her applications for Supplemental Security Income (“SSI”) and Disability Insurance Benefits (“DIB”). She contends the Court should remand the case based upon new evidence submitted to the Appeals Council, and because the ALJ misevaluated her testimony and certain medical opinions, resulting in an erroneous residual functional capacity (“RFC”) assessment. Dkt. 10 at 1. For the reasons below, the Court REVERSES the Commissioner's final decision and remands the case for further proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff is currently forty-five years-old, has a high school education, and previously worked as an insurance clerk, hospital admitting clerk, and residential leasing agent. Tr. 64. In March 2019, she applied for benefits, alleging disability as of February 13, 2017. Tr. 565-82.

Her application was denied initially and on reconsideration. Tr. 381-408, 411-42. The ALJ conducted a hearing in June 2021 (Tr. 72-101), and subsequently issued a decision on August 17, 2021, finding Plaintiff not disabled. Tr. 54-66.

After the ALJ's decision, Plaintiff submitted additional evidence to the Appeals Council. Tr. 1-2, 11-50, 102-378. The Appeals Council decided some of the new evidence did not relate to the period at issue (Tr. 11-50), and the other new evidence did not show a reasonable probability it would change the outcome of the decision (Tr. 102-378). Tr. 2. As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the Commissioner's final decision. Tr. 1-4.

DISCUSSION

A. New Evidence

Plaintiff's new evidence involves two categories: First, 277 pages of records that predated the ALJ's August 17, 2021, decision ("category one"); and second, forty pages of records from September 2021, which post-dated the ALJ's August 17, 2021, decision but predated Plaintiff's December 31, 2022, date last insured ("DLI") ("category two"). Tr. 102-378, 11-50; *see* Tr. 54 (findings regarding Plaintiff's DLI).

Most notably, category one includes a definitive diagnosis of complex regional pain syndrome ("CRPS") from pain specialist, Dr. Elisabeth Powelson, along with Dr. Powelson's June 16, 2021 visit records.¹ Tr. 347-53. Approximately forty-five of the 277 pages of category

¹ CRPS, also known as Reflex Sympathetic Dystrophy Syndrome ("RSDS" or "RSD"), refers to a "unique" and "chronic pain syndrome" that may develop following even a minor injury to bone or soft tissue, most often following trauma to a single extremity. Social Security Ruling ("SSR") 03-02p, 2003 WL 22399117, at *1. Many individuals with CRPS are between 18 and 49 years old. *Id.* at *8. Its primary characteristic "is a 'continuous, intense pain out of proportion to the severity of the injury.'" *Hunt v. Astrue*, No. EDCV 08-00299-MAN, 2009 WL 1519543, at *4 (C.D. Cal. May 29, 2009) (quoting National Institutes of Health, National Institute of

one records pertain to Dr. Powelson’s June 2021 examination and diagnosis. *See* Tr. 334-78 (referral to Dr. Powelson and supporting medical records from June 2021). The remaining 232 pages in category one, however, largely include records related to the adjudication of Plaintiff’s workers’ compensation claim and medical evidence that is duplicative of records already contained in the administrative record (“AR”). *See* Tr. 102-333. Category two includes medical records from Plaintiff’s follow-up September 1, 2021, visit to Dr. Powelson, at which time Dr. Powelson reiterated her CRPS diagnosis and articulated a treatment plan for Plaintiff’s CRPS. *See generally* Tr. 11-50; *see also* Tr. 24-28 (treatment plan and related notes).

1. Legal Standards

Social Security Administration (“SSA”) regulations permit a claimant to submit additional evidence to the Appeals Council if the claimant shows good cause for not having submitted it earlier. 20 C.F.R. § 404.970(b). When good cause is shown, the regulations provide that the Appeals Council will review a case based on additional evidence submitted to the Council for the first time if the evidence is “material,” it relates to a time period on or before the ALJ’s decision, and “there is a reasonable probability that the additional evidence would change the outcome of the decision.” 20 C.F.R. § 404.970(a)(5); *see also White v. Kijakazi*, 44 F.4th 828, 835–36 (9th Cir. 2022) (reiterating standards).

When the Appeals Council “considers” the new evidence “in denying review of the ALJ’s decision, [it becomes] part of the administrative record, which the district court must consider in determining whether the Commissioner’s decision is supported by substantial evidence.” *Brewes*

Neurological Disorders and Stroke Complex Regional Pain Syndrome Information Page, <http://www.ninds.nih.gov/disorders/reflex-sympathetic-dystrophy>); *see also* SSR 03–02p, 2003 WL 22399117, at *5 (recognizing that the signs and symptoms of CRPS “may remain stable over time, improve, or worsen”).

1 *v. Commissioner of Soc. Sec. Admin.*, 682 F.3d 1157, 1162-63 (9th Cir. 2012). That includes
 2 new evidence that the Appeals Council considered but failed to exhibit, like categories one and
 3 two here. *See Williams v. Berryhill*, No. 17-5885-BAT, 2018 WL 6737511, at *3 (W.D. Wash.
 4 Apr. 19, 2018) (concluding that the Appeals Council’s statement that it “did not consider and
 5 exhibit this evidence,” was contradicted by the Appeals Council’s subsequent finding that the
 6 “evidence d[id] not show a reasonable probability that it would change the outcome of the
 7 decision,” and holding that the new evidence was “thus reviewable by the Court in determining
 8 whether the ALJ’s decision remain[ed] supported by substantial evidence”); *see also* Tr. 2. If the
 9 Appeals Council mistakenly fails to consider new evidence based on an erroneous assessment of
 10 that evidence, remand to the ALJ is appropriate so that the ALJ can reconsider its decision in
 11 light of the additional evidence. *See Taylor v. Comm’r of Soc. Sec. Admin.*, 659 F.3d 1228, 1232
 12 (9th Cir. 2011); *accord Edgcomb v. Berryhill*, 741 F. App’x 390, 393 (9th Cir. 2018).

13 **2. Good Cause**

14 Plaintiff argues that there is good cause for the delayed submission of the CRPS
 15 diagnosis and related evidence because Dr. Powelson’s June 2021 visit records were signed by
 16 Dr. Powelson after Plaintiff’s June 2021 hearing commenced, and the September 2021 records
 17 post-dated the hearing and the ALJ’s decision. Dkt. 10 at 5. Plaintiff, however, has not offered
 18 any reason, in support of her submission of the additional records (which included many
 19 duplicative records) in category one dated prior to June 2021. *See* Tr. 102-333. Neither the
 20 Commissioner nor the Appeals Council addressed the issue.

21 Based on Plaintiff’s argument and the lack of opposition, the Court concludes good cause
 22 exists regarding the category one and category two records that pertain to Plaintiff’s CRPS
 23 diagnosis and related visits, including Tr. 11-50 and Tr. 334-378 (hereinafter the “new CRPS

evidence”). Those records came into existence immediately prior to and following the ALJ’s June 2021 hearing. *See Chase v. Colvin*, 665 F. App’x 583, 587 (9th Cir. 2016) (quoting *Mayes v. Massanari*, 276 F.3d 453, 463 (9th Cir. 2001)) (holding that “good cause” exists where “the new evidence was unavailable earlier”). However, the pre-June 2021 documents are largely duplicative of the evidence the ALJ considered, and the Court as discussed below finds remand for further proceedings is necessary. The Court, accordingly, need not further discuss the records found at Tr. 102-333 in conjunction with Plaintiff’s assignment of error regarding new evidence.

3. Materiality and Impact on ALJ’s Decision

Plaintiff argues the new CRPS evidence is material because it includes a formal diagnosis of CRPS, the signs and symptoms of which were already supported by objective medical evidence in the record. *See* Dkt. 10 at 4 (multiple citations to the record). Plaintiff notes the ALJ specifically declined to find CRPS was a severe impairment based on the absence “of a formal diagnosis of CRPS in the record,” and argues the ALJ’s reasoning suggests he would have given more consideration to the medical evidence and testimony regarding the signs and symptoms of CRPS if he had a formal diagnosis. *See* Tr. 57.

The Commissioner responds a diagnosis alone is insufficient to establish the existence of a medically determinable impairment at step two, suggesting the new CRPS diagnosis would not have changed the ALJ’s step two analysis. Dkt. 17 at 3. The Commissioner further argues even though there was no formal CRPS diagnosis, the ALJ adequately considered Plaintiff’s pain in assessing her RFC at step four.

Plaintiff counters the ALJ did not in fact address all of her CRPS symptoms, including her “motor weakness at the upper extremities, cool hands with evidence of impaired perfusion, delayed capillary refill in hands and nailbeds, and swelling in [her] hands.” Dkt. 10 at 4, Dkt. 18

1 at 2. Plaintiff further notes the new CRPS evidence is not limited to the diagnosis itself but
2 includes Dr. Powelson’s abnormal examination findings as well. *See* Tr. 27, 345 (Dr. Powelson
3 found Plaintiff satisfied the “Budapest criteria for her bilateral upper extremity pain,” and
4 explained how Plaintiff’s multiple symptoms satisfied the four-step CRSP diagnostic criteria).

5 The Court concludes the new CRSP evidence is material because it provides new insight
6 on existing medical evidence and testimony regarding physical symptoms the ALJ found were
7 “out of proportion” to the objective medical evidence, and, additionally, because it provides
8 context for mental impairments and symptoms the ALJ deemed “situational” or similarly
9 unsupported by the longitudinal evidence. *See Holster v. Berryhill*, No. C17-5578-BAT, 2018
10 WL 571798, at *2 (W.D. Wash. Jan. 25, 2018) (citing *Mayes*, 276 F.3d at 462) (noting new
11 evidence is material “if it bears directly and substantially on the matter in dispute and if there is a
12 reasonable possibility that the new evidence would have changed the outcome of the
13 administrative hearing”); *see also* Tr. 59 (concluding that Plaintiff’s “physical complaints are out
14 of proportion to the medical record”); Tr. 61. Contrary to the Commissioner’s argument
15 otherwise, the Court agrees there is a reasonable probability the diagnosis would have altered the
16 outcome given the existing medical evidence of record and the ALJ’s express reliance on the
17 absence of a diagnosis in his sequential analysis at step two. *See* Tr. 57. Moreover, the records
18 show the ALJ’s existing step four analysis did not adequately address Plaintiff’s CRPS and
19 related symptoms.

20 The Court notes Plaintiff’s new CRSP evidence, at a minimum, triggers the ALJ’s
21 obligation to consult the relevant social security ruling, SSR 03-02p, which itself requires the
22 ALJ to reassess his steps two and four conclusions in light of additional considerations detailed
23 in that ruling. *See* SSR 03-2p, Titles II and XVI: Evaluating Cases Involving Reflex

1 Sympathetic Dystrophy Syndrome/Complex Regional Pain Syndrome, 2003 WL 22399117 (Oct.
2 20, 2003); *Givens v. Kijakazi*, No. 19-35671, 2022 WL 1486829, at *1 (9th Cir. May 11, 2022)
3 (holding that ALJ erred in evaluating evidence related to claimant’s CRSP, including her
4 testimony and the medical opinions, where the ALJ failed to consult SSR 03-02p, but instead
5 stated simply that she had “considered all of the claimant’s established symptoms and resulting
6 functional limitations – regardless of the diagnostic label – in assessing [the claimant’s RFC]”);
7 *Saffaie v. Berryhill*, 721 F. App’x 709, 710 (9th Cir. 2018) (“The ALJ’s failure to analyze [the
8 claimant’s] CRPS diagnosis in accordance with SSR 03-02p was not a harmless error.”).

9 Specifically, SSR 03-02p provides CRPS can be established at step two as a medically
10 determinable impairment by the persistence of pain complaints “that are typically out of
11 proportion to the severity of any documented precipitant and one or more of the following
12 clinically documented signs in the affected region at any time following the documented
13 precipitant:” swelling; autonomic instability (including changes in skin color, texture, or
14 temperature; change in degree of sweating; and abnormal pilomotor erection (goosebumps));
15 abnormal hair or nail growth; osteoporosis; or involuntary movements of the affected region of
16 the initial injury. 2003 WL 22399117, at *4. As Plaintiff accurately notes, the record
17 demonstrates Plaintiff suffered from several of these symptoms. *See* Dkt. 10 at 4 (citing Tr. 708,
18 727, 749, 758, 768, 774, 779-80, 937, 940-41, 1102, 1365).

19 In determining the RFC of an individual who has CRPS, SSR 03-02p further requires the
20 ALJ to consider “all of the individual’s symptoms . . . in deciding how such symptoms may
21 affect functional capacities” with “[c]areful consideration . . . [of] the effects of pain and its
22 treatment on an individual’s capacity to do work-related physical and mental activities in a work
23 setting on a regular and continuous basis.” 2003 WL 22399117, at *7. The ruling recognizes

1 that, “[c]onflicting evidence in the medical record is not unusual in cases of [CRPS] due to the
2 transitory nature of its objective findings and the complicated diagnostic process involved” and,
3 in turn, requires “[c]larification of any such conflicts in the medical evidence . . . first from the
4 individual's treating or other medical sources.” *Id.* at *5; *see also id.* at *4 (recognizing that
5 “longitudinal clinical records reflecting ongoing evaluation and treatment . . . especially [from]
6 treating sources are extremely helpful” in evaluating a disability claim based on CRPS). Finally,
7 because chronic pain is an “expected symptom” of CRPS, “careful consideration” must be given
8 to the evaluation of the credibility of the claimant's pain. *Id.* at *6–*7.

9 Here, Plaintiff's treating physicians, Drs. Cheryl Hayes, and Carrie Hardy, both opined
10 that based on her pain and physical impairments, Plaintiff was limited to either sedentary or less
11 than sedentary work. *See* Tr. 1415-18 (Dr. Hardy's April 2021 opinion Plaintiff was limited to
12 less than sedentary work based on her diagnosed brachial plexus disorder and radiating bilateral
13 arm pain and hand pain, headaches, swelling, depression, disrupted sleep, and decrease in grip
14 strength); 879-83 (Dr. Hayes' November 2018 opinion that Plaintiff was limited to sedentary
15 work based on her diagnosed thoracic outlet syndrome, ulnar neuropathy, and her constant neck
16 pain with headaches, radiating pain in her thoracic region, and bilateral pain down arms, wrists,
17 and hands, tingling, and numbness). In concluding that Plaintiff possessed an RFC for light
18 work, the ALJ rejected treating Drs. Hardy's and Hayes' opinions for the very reasons
19 anticipated and addressed by SSR 03-02p: inconsistencies and conflicts in the evidence. Tr. 63.

20 The same was the case with the ALJ's rejection of the November 2018 opinion of
21 examining psychologist, Dr. Luci Carstens, regarding Plaintiff's mental impairments. *See* Tr.
22 63-64 (rejecting Dr. Carsten's opinion regarding the existence of several marked impairments as
23 inconsistent with the record); *see also* SSR 03–02p, 2003 WL 22399117, at *5 (noting that the

1 symptoms and treatment of CRPS may impact a claimant’s cognition and mood, including,
2 specifically, “an individual’s ability to maintain attention and concentration”). Despite
3 recognizing the conflicting nature of the evidence in rejecting Plaintiff’s testimony and the
4 treating and examining medical opinions at step four, the ALJ did not discuss or apply SSR 03-
5 02p – presumably because, at that point, the ALJ did not have evidence of a formal CRSP
6 diagnosis. *See* Tr. 59-64; *see also* Tr. 60 (rejecting Plaintiff’s testimony and noting evidence that
7 in 2018, Plaintiff “had seen multiple specialists regarding her symptoms with no definitive
8 diagnosis”).

9 For these reasons, the ALJ is required to consider on remand the new CRPS evidence (Tr.
10 11-50, 334-378) because it directly and substantially impacts Plaintiff’s case, and there is a
11 reasonable possibility that the new evidence would have changed the outcome of the
12 administrative hearing. In doing so, the ALJ must also re-evaluate the medical opinions and
13 Plaintiff’s testimony in accordance with SSR 03-02p.

14 **B. Additional Issues**

15 Because the new CRSP evidence necessarily requires the ALJ to reassess on remand
16 Plaintiff’s other arguments regarding Plaintiff’s testimony and the medical opinions the Court
17 concludes the Court the ALJ shall on remand reassess Plaintiff’s testimony and the other medical
18 opinions. The Court also notes Dr. Harmon’s statement at Tr. 915-16 appears to constitute a
19 “medical opinion,” which the ALJ should evaluate along with the other medical opinions on
20 remand.² *See* 20 C.F.R. §§ 404.1513(a)(2), 416.913(a)(2). Although the Court did not consider

22 ² Plaintiff notes that the ALJ failed to consider the November 2018 medical opinion from
23 psychologist, Dr. Dana Harmon. Dkt. 10 at 15-16; *see also* Tr. 915-16, 63-64. The
Commissioner counters that Dr. Harmon’s submission did not constitute a “medical opinion”
because she failed to state what Plaintiff “can do despite [her] limitations.” Dkt. 17 at 18. The
Court disagrees. *See* 20 C.F.R. §§ 404.1513(a)(2), 416.913(a)(2) (2017 revisions updated

1 the pre-June 2021 documents that Plaintiff submitted to the Appeal Council, the ALJ is directed
2 to consider these records on remand.

3 CONCLUSION

4 The Commissioner's decision is REVERSED, and this case is REMANDED for further
5 administrative proceedings under sentence four of 42 U.S.C. § 405(g). On remand, the ALJ shall
6 consider the new CSRP evidence at steps two and four of his sequential analysis in accordance
7 with SSR 03-02p, which requires the ALJ to re-evaluate Plaintiff's testimony and the medical
8 opinions regarding Plaintiff's physical and mental impairments. The AJ shall also consider the
9 pre-2021 records submitted to the Appeals Council, develop the record as necessary and
10 redetermine Plaintiff's RFC as needed. The ALJ shall proceed to the remaining steps of the
11 disability determination process as appropriate.

12 DATED this 15th day of February, 2023.

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14 
15 BRIAN A. TSUCHIDA
16 United States Magistrate Judge
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20 regulations to define a "medical opinion" as "a statement from a medical source about what [the
21 claimant] can still do despite [their] impairment(s) and whether [they] have one or more
22 impairment-related limitations or restrictions" in their "ability to perform physical demands of
23 work activities, such as sitting, standing, walking, lifting, carrying, pushing, pulling or other
physical functions"). Dr. Harmon opined that while she "did not see strong evidence of
any significant limitations in [Plaintiff's] work-related cognitive functioning," she nevertheless
agreed with Dr. Carstens regarding the limitations associated with Plaintiff's social functioning.
Tr. 915-16. Dr. Carstens, in turn, opined that Plaintiff possessed marked impairments in her
abilities to communicate and perform effectively in a work setting and to maintain appropriate
behavior in a work setting. Tr. 889.